IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 29767 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDA & 3 - Petitioner(s)
Versus
HIMATSINH DOLATSINH PARMAR - Respondent(s)

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Appearance :
MR JOY MATHEW for Petitioner(s) : 1 - 4.
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 07/12/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226 of the Constitution of India is order dated 2nd August 2007 passed by the Central Administrative Tribunal, Ahmedabad Bench in Original Application No.512 of 2006 directing the petitioners herein, i.e. Union of India and the authorities of the Postal Department to release the amount of Death cum Retirement Gratuity ("DCRG" for brevity) payable to the respondent herein, who retired on superannuation as Deputy Post Master on 31st July 2005.

2. In discharge of his duty as Deputy Post Master, Dahod, the respondent had allowed issuance of Kisan Vikas Patras ("KVPs" for brevity) of Rs.7.5 lacs to a cooperative credit society of employees of an educational institution. That had happened as far back as in the year 1997. When the KVPs attained maturity, the Department declined to pay interest on the amount of certificates on the ground that under the relevant rules KVPs were meant only for individuals. The cooperative society in question therefore, filed an application before Consumer Forum, Dahod, which directed payment of interest as per the KVP Scheme, post-maturity interest and penal interest. The respondent was issued a minor penalty

charge sheet dated 10th July 2003 and penalty of reduction upto three stages without cumulative effect was imposed by order dated 26th August 2003. The respondent appealed against that order and it was dismissed on 7th January 2004. The respondent did not carry the matter any further. The Department also challenged the order of the Consumer Forum before the Gujarat State Consumer Redressal Commission. The Commission dismissed the appeal on 23rd February 2006.

3. It appears that the respondent had also opened a monthly income scheme account for Rs.78,000/- in favour of a lady and Mamlatdar, Dahod alleged to be in contravention of the rules. When payment of monthly interest was withheld and the depositors were asked to close the account, they filed a case before the Consumer Forum and the Forum allowed that case in favour of the depositors and the Department was asked to pay admissible interest together with costs. The costs were ordered to be recovered from the concerned employee.

4. Upon retirement on superannuation on 31st July 2007, the respondent was granted provisional pension. However, gratuity and leave encashment were withheld on the ground of

the above alleged irregularities during his tenure. The respondent therefore, filed the application before the Central Administrative Tribunal which by the impugned judgement has partly allowed the application by directing the Department to release the gratuity. However, as far as leave encashment is concerned, the Tribunal directed the Department to consider the matter in accordance with the rules. The Tribunal further clarified that the order of the Tribunal did not debar the authorities from recovering any amount due from the original applicant (respondent herein) by filing a civil suit or taking recourse to measures in accordance with law. It is against the aforesaid order, the Union of India and the authorities of the Postal Department are before us.

5. Mr.Joy Mathew, learned Standing Counsel appearing for the Union of India has submitted that the matter regarding imposition of minor penalty on the respondent for irregularity in issuance of KVPs has been referred to the President for taking action under the provisions of the Central Civil Services (Pension) Rules. Therefore, until that decision is taken, the Tribunal ought not to have given any direction for releasing the pension. In response to a query from the Court, the learned counsel stated that in the matter of leave encashment,

the Department has already taken decision against the respondent employee, who has already retired.

6. Having heard the learned Standing Counsel we are of the view that in view of the facts and circumstances of the case, this is not a fit case for interfering with impugned order of the Central Administrative Tribunal, in exercise of our extraordinary discretionary jurisdiction under Article 226 of the Constitution. Disciplinary action was already taken against the respondent for irregularity in issuance of the KVP. Had the KVP been taken in the name of an individual office bearer of the concerned cooperative society, which was a cooperative society of the employees of an educational institution, the Department would have been required to pay interest at the same rate which was 12 % per annum at the relevant time. It was because the Department contested the proceedings before the Consumer Forum that the Forum passed an order awarding penal interest at the rate of 15% per annum, if the amount was paid to the consumer beyond the time limit stipulated in the order of the Consumer Forum. Since the Department had already imposed penalty on the respondent for the so called misconduct in question, the Tribunal has rightly directed the Department to release the amount of

DCRG, more particularly when the respondent had retired as far back as on 31st July 2005. Moreover, we have also taken into account the fact that the Department has already rejected the respondent's claim for leave encashment. We may not, however, be treated to have expressed any opinion on that issue since that is not the subject matter of this petition.

7. In view of the above discussion the petition is dismissed.

(M.S. SHAH, J.)

(RAVI R. TRIPATHI, J.)

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